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In The Supreme Court of the United States

ALBERT GONZALES, ET AL.,
Petitioners,

v.

STATE OF OREGON, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

BRIEF OF AMICUS CURIAE

National Legal Center for the Medically Dependent & Disabled, Inc., In Support of Petitioners

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INTEREST OF AMICUS CURIAE[1]

The National Legal Center for the Medically Dependent & Disabled, Inc., is a non-for-profit, Indiana corporation formed as a public interest law firm dedicated to the protection of the medical treatment rights of persons with disabilities. Since its inception in 1984, the National Legal Center has litigated numerous cases involving withholding and withdrawing life-sustaining medical treatment and care and has been involved in several cases involving assisted suicide. It opposes assisted suicide and euthanasia as contrary to rights and interests of persons with disabilities and who rely on medical treatment and care for continued survival. The National Legal Center publishes a scholarly journal, *Issues in Law and Medicine*.

SUMMARY OF THE ARGUMENT

Both the present state of law and the strong trend of American law since 1994 – when the Oregon Death with Dignity Act ("DWDA") legalizing physician-assisted suicide using controlled substances was enacted – supports the Attorney General's conclusion that using controlled substances for assisted suicide is not a "legitimate medical purpose" for "treatment" within the meaning of the Controlled Substances Act ("CSA") and its implementing regulations.

Because there is no indication to the contrary in the plain language of the CSA, the CSA is properly interpreted to have uniform application throughout the United States and in accord

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[1] **U. S. Supreme Court Rule 37.6**: Amicus Curiae discloses that (1) no counsel for a party authored this brief in whole or in part, and (2) a partial monetary contribution was made toward the preparation or submission of this brief by the Alliance Defense Fund. **U.S. Supreme Court Rule 37.3(a):** Petitioners and Respondents consented to the filing of this brief. Consent letters have been provided to the Clerk of this Court.

with the standard of practice throughout the United States. The Attorney General was thus fully warranted in concluding that a nationwide standard should govern his determination of what constitutes a legitimate medical purpose without regard to Oregon's anomalous law sanctioning assisted suicide with controlled substances.

Just as when this Court held in 1997 that there is no federal constitutional right to physician-assisted suicide, it remains the case the assisted suicide is crime in almost all the States. At present, thirty-four (34) States criminalize by statute assisted suicide through use of any means, including controlled substances. Other States continue to prohibit the practice as a common law crime or, potentially, as a form of aiding or abetting a homicide. Still others provide statutory civil remedies and professional penalties for any assisted suicide. No state other than Oregon has explicitly sanctioned assisted suicide by statute.

Since Oregon enacted the DWDA in 1994, fourteen (14) states have enacted statutes that specifically criminalize assisted suicide or provide for new or enhanced civil remedies or professional penalties for assisted suicide. Six (6) states enacted prohibitions on assisted suicide; eight (8) states added civil remedies and professional penalties to their criminal statutes. Thus, by a ratio of 14-1, states have acted to increase opposition to assisted suicide since the Oregon DWDA was enacted.

No proposal to legalize physician-assisted suicide has passed either house of any state legislature. Moreover, two (2) states – California and Washington – rejected voter initiatives to legalize physician-assisted suicide using controlled substances prior to 1994, when Oregon enacted the DWDA by voter initiative. Since 1994, two (2) states – Michigan and Maine – have rejected voter initiatives proposing statutes virtually identical to the Oregon DWDA. Neither the legislative nor initiative process has

warranted any substantial support for use of controlled substances for assisting suicide as a legitimate medical practice.

Similarly, no state court of final jurisdiction has held that there is any legal right under state constitutions to physician-assisted suicide using controlled substances. The Supreme Courts of Florida and Alaska, as well as the California Court of Appeals, have specifically rejected such claims. The Michigan Supreme Court rejected a similar claim based on federal constitutional grounds.

Finally, Congress has enacted comprehensive legislation through the Assisted Suicide Funding Restriction Act of 1997 prohibiting the use of any federal funds, facilities, or employees to support assistance in suicide through use of any means. It forbids use of federal funds in any federal health care program for this purpose, and it forbids grants or support to any program that supports the practice. The ban applies to all subsequent legislation and to allocations made to the District of Columbia.

The Act also forbids all federal legal and other advocacy programs from supporting or advocating assisted suicide. It provides that no federal statute should be construed to compel health care providers information on assisted suicide nor impose any requirement to provide such a service.

In sum, the state legislatures, state initiative processes, state courts, and Congress strongly support the Attorney General's conclusion that use of controlled substances for assisting in suicide is not a legitimate medical practice. Moreover, the clear trend in American law rejects legitimacy of the practice. If the Oregon DWDA is an experiment in the laboratory of the states, it is an experiment that has failed.

ARGUMENT

The purpose of this brief is to demonstrate that development of state and federal law on assisted suicide since the 1994 enactment of the Oregon "Death with Dignity Act, Or. Rev. Stat. §§ 127.800 *et seq.* (2003) ("DWDA"), demonstrates that Oregon's statute legalizing assisted suicide remains a sole aberration in American law. Indeed, there is a strong trend in American law *against* permitting assisted suicide evidenced by increased numbers state and federal laws banning, prohibiting governmental funding and facilitation of, and providing new penalties for the practice. As such, the Attorney General is fully warranted in concluding that dispensing, prescribing, and administering controlled substances for assisted suicide is not recognized as a "legitimate medical purpose" for "treatment," 21 C.F.R. § 1306.04(a), within the United States.

I. Whether Prescribing, Dispensing, or Administering Controlled Substances Is a "Legitimate Medical Purpose" for "Treatment" Is a Determination to Be Made In Accord with a National Standard.

At issue in this case is an interpretative rule issued by the Attorney General of the United States on November 9, 2001, in the *Federal Register* (66 Fed. Reg. 56,607 (2001)). Pet. App. 110a-105a. The rule provided that "assisting suicide is not a 'legitimate medical purpose' within the meaning of 21 C.F.R. § 1306.04," an implementing regulation of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* ("CSA"). Pet. App. at 102a. The Attorney General thus concluded that "prescribing, dispensing, or administering federally controlled substances to assist suicide violates the CSA." *Id.*

In 1994, Oregon enacted a law legalizing physician assisted suicide by use of controlled substances through the Oregon DWDA. Nevertheless, the Attorney General's rule provided that

his conclusion "applied regardless of whether state law authorizes or permits such conduct by practitioners or others." Pet. App. at 102a. Thus, the Attorney General's rule would render prescribing, dispensing, and administering federally controlled substances for assisted suicide contrary to the CSA, even though the Oregon DWDA or some other future state law legalizes or allows this practice.

Since there is no indication in its plain language to the contrary, the CSA was intended to have uniform application throughout the United States, not subject to the various policy views that prevail in individual states or locales. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 43, 47 (1989) (without clear indication to the contrary, Congress does not enact a statute dependent on state law). The Attorney General was thus fully warranted in adopting a uniform rule that did not take into account Oregon's anomalous decision to permit assisted suicide using controlled substances. He was fully warranted in concluding that use of controlled drugs to assist persons to commit suicide is not a "legitimate medical purpose" or for "treatment" within the meaning of the CSA and its implementing regulations.

That Oregon has legalized use of federally controlled drugs for assisted suicide is irrelevant to the Attorney General's authoritative interpretation of the CSA. The standard of medical practice under the CSA is that which is "in accordance with the standard of medical practice generally recognized and accepted in the United States." *United States v. Moore*, 423 U.S. 122, 139 (1975) (quoting jury instructions with approval). *See also United States v. Vamos*, 797 F.2d 1146, 1151 (2d Cir. 1986), *cert. denied*, 479 U.S. 1036 (1987) (standard of medical practice is that "generally recognized in the United States"); *United States v. Norris*, 780 F.2d 1207, 1209 & n.2 (5th Cir. 1986 (same); *United States v. Daniel*, 3 F.3d 775, 778 (4th Cir. 1993), *cert. denied*, 510 U.S. 1130 (1994) (same).

Any other standard would render the CSA virtually meaningless and unenforceable. Local or state medical practice might dictate a nearly limitless number of standards under which physicians and pharmacists might operate in accord with local practice and custom, state legislation, or both.

II. Development of State and Federal Law in the United States Supports the Attorney General's Conclusion that Use of Controlled Substances for Assisted Suicide Is Not a "Legitimate Medical Purpose" for "Treatment."

In holding that there is no federal constitutional right to physician-assisted suicide, this Court observed "that in almost every State . . . it is a crime to assist a suicide." *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997). Nothing has changed in this regard since 1997. Nor has any State legalized assisted suicide since 1994 when Oregon legalized the practice through the use of controlled substances. To the contrary, several states have explicitly prohibited the practice and increased penalties attached to it; two state supreme courts have upheld the bans on assisted suicide under their respective constitutions; two voter initiatives to legalize the practice were defeated; the federal government enacted a comprehensive ban on the use of its funds, facilities, or funded agencies from involvement in the practice. In sum, the present state and clear trend of the law of assisted suicide strongly supports the Attorney General's conclusion that use of controlled substances for this purpose is not a legitimate medical practice or form of treatment in the United States.

A. *State Statutory Law Supports the Conclusion that Assisted Suicide for Any Reason Is Not A "Legitimate Medical Purpose" for "Treatment."*

The Oregon DWDA legalizing use of controlled substances for assisted suicide is a singular aberration that cannot justify turning enforcement of the CSA on its head, demanding that the

Oregon tail wag the federal dog. No other state has followed the Oregon lead. To the contrary, they have proceeding in the opposite direction, acting to affirm and strengthen opposition to use of controlled substances for such a purpose.

1. Fourteen (14) States Have Enacted New and Strengthened Prohibitions on Physician-Assisted Suicide Since the Year of Enactment of the Oregon Death With Dignity Act.

At present, thirty-four (34) States by statute explicitly criminalize assisted suicide for any reason, in any circumstance, and through the use of any means. **Alaska**: Alaska Stat. § 11.41.120; **Arkansas**: Ark. Code Ann. § 5-10-104; **Arizona**: Ariz. Rev. Stat. § 13-1103; **California**: Cal. Penal Code § 401; **Colorado**: Colo. Rev. Stat. § 18-3-104; **Connecticut**: Conn. Gen. Stat. Ann. § 53a-56; **Delaware**: Del. Code Ann. tit. 11, § 645; **Florida**: Fla. Stat. § 782.08; **Georgia**: Ga. Code Ann. §16-5-5; **Iowa**: Iowa Code Ann. § 707A.2; **Indiana**: Ind. Code Ann. § 35-42-1-2.5; **Kansas**: Kan. Stat. Ann. § 21-3406; **Kentucky**: Ky. Rev. Stat. Ann. § 216.302; **Louisiana**: La. Rev. Stat. Ann. § 14:32.12; **Maine**: Me. Rev. Stat. Ann. tit. 17-A, § 204; **Minnesota**: Minn. Stat. Ann. § 609.215; **Missouri**: Mo. Rev. Stat. § 565.023; **Mississippi**: Miss. Code Ann. § 97-3-49; **Montana**: Mont. Code Ann. § 45-5-105; **Nebraska**: Neb. Rev. Stat. Ann. § 28-307; **New Hampshire**: N.H. Rev. Stat. Ann. § 630:4; **New Jersey**: N.J. Stat. Ann. § 2C:11-6; **New Mexico**: N.M. Stat. Ann. § 30-2-4; **New York**: N.Y. Penal Law § 125.15; **North Dakota**: N.D. Cent. Code § 12.1-16-04; **Oklahoma**: Okla. Stat. tit. 63, §§ 3141.1 to 3141.8; **Pennsylvania**: 18 Pa. Cons. Stat. § 2505; **Rhode Island**: R.I. Gen. Laws § 11-60-1 to -5; **South Carolina**: S.C. Code Ann.§ 16-3-1090; **South Dakota**: S.D. Codified Laws § 22-16-37; **Tennessee**: Tenn. Code Ann. § 39-13-216; **Texas**: Tex. Penal Code § 22.08; **Washington**: Wash. Rev. Code. Ann. § 9A.36.060; **Wisconsin**: Wis. Stat. § 940.12.

Other jurisdictions have no specific statute penalizing assisted suicide, but continue to recognize common law crimes, including assisted suicide, or may punish assisting in suicide as a form of aiding or abetting a homicide. *See, e.g.*, **Idaho:** Idaho Code § 18-303 (recognizing common law offenses as crimes); **Washington D.C.:** D.C. Code Ann. § 22-1807 (same). *See also* Thomas J. Marzen, Mary K. O'Dowd, Daniel Crone & Thomas J. Balch, "Suicide: A Constitutional Right?" 24 Duquesne L. Rev. 1, 56-100 (1985) (discussing English/American law of suicide in absence of statute).[2]

Crucially, no State has liberalized its assisted suicide statutes or common law since 1994 when the Oregon DWDA was enacted. To the contrary, fourteen (14) States have either enacted explicit statutory bans on assisted suicide, including physician-assisted suicide, that did not exist before 1994 or strengthened anti-assisted suicide laws already on the books by adding provisions warranting revocation of health care professional licenses, compensatory damages, punitive damages, and injunctive relief for assisting in suicide.

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[2]Ten (10) states have no case or statutory law that specifically penalizes or otherwise prohibits assisted suicide: **Alabama, Hawaii, Illinois, Massachusetts, North Carolina, Nevada, Utah, Vermont, West Virginia,** and **Wyoming**. However, assisted suicides probably cannot be safely performed and are certainly not openly performed in these states without specific statutory authorization like that of Oregon's DWDA in view of the lengthy common law history opposed to assisted suicide, the possibility that homicide statutes might be applied, continuing medical ethical condemnations of the practice and the criminal and civil law implications this entails, the need to preserve the doctrine of transferred intent in this context so that an crime exists when third parties are injured or killed by suicides, and the fact that suicide and assisted suicide everywhere remain against public policy (as evidenced by such practices as police interference in suicides and the universal presumption that those who would attempt suicide are mentally or emotionally incompetent as "dangers to themselves or others").

Thus, six (6) states have enacted new prohibitions on assisted suicide since 1994. **Indiana:** Ind. Stat. Ann. §§ 35-42-1-2 to 35-42-1-2.5 (effective 1994) (criminal ban); **Maryland:** Md. Criminal Law Code Ann. § 3-101 to § 3-104 (adopted 1999)(criminal ban); **Michigan:** Mich. Comp. Laws Ann. § 750.329a (adopted September 1, 1998)(criminal ban); **Ohio:** Oh. Rev. Code § 3795.01 to 3795.03 (adopted 2002)(revoking health care professional licenses and sanctioning civil injunctive relief); **Tennessee:** Tenn. Code Ann. § 39-13-216 (enacted 1993, effective 1994)(sanctioning injunctive, compensatory, and punitive relief against a person violating or about to violate Tennessee's criminal assisted suicide statute); **Virginia:** Va. Code § 8.01-662.1 (adopted 1998)(prohibiting as against public policy and sanctioning civil damages and relief).

In addition, since 1994, eight (8) States have enacted provisions strengthening pre-1994 statutory prohibitions on assisted suicide. **Kansas:** Kan. Stat. Ann. § 60-4401 *et seq.* (amended July 1, 1998)(providing injunctive relief as well as compensatory and exemplary damages against anyone violating or attempting to violate Kansas' assisted suicide law); **Kentucky:** Ky. Rev. Stat. Ann. § 216.306 (amended April 8, 1994)(affording injunctive relief against a person reasonably believed to be about to violate Kentucky's assisted suicide law); **Minnesota:** Minn. Stat. Ann. § 609.215 (amended 1995)(offering injunctive relief, compensatory and punitive damages, and attorney's fees against anyone violating or attempting to violate Minnesota's assisted suicide law); **North Dakota:** N.D. Cent. Code § 12.1-16-05, § 12.1-16-07 (amended August 1, 1999)(establishing injunctive relief and compensatory and punitive damages against a person who has violated or is reasonably believed to be about to violate North Dakota's assisted suicide law); **Oklahoma:** Okla. Stat. tit. 63, §§ 3141.5 to 3141.6 (July 1, 2001)(creating injunctive relief and compensatory and punitive damages against a person for

violating or attempting to violate Oklahoma's assisted suicide law); **Rhode Island:** R.I. Gen. Laws § 11-60-5 (amended 1996)(permitting the attorney general to seek injunctive relief against any one believed to be about to violate Rhode Island's assisted suicide law); **South Carolina:** S.C. Code Ann. § 16-3-1090 (amended June 30, 1998)(granting injunctive relief against anyone reasonably believe to be about to violate or to be in the course of violating South Carolina's assisted suicide law); **South Dakota:** S.D. Codified Laws § 22-16-37.2 to -37.3 (amended March 21, 1997)(allowing injunctive relief as well as both compensatory and punitive damages to be sought against a person violating or about to violate South Dakota's assisted suicide law).

Thus, not only does an overwhelming majority of States certainly continue to ban physician-assisted suicide, the margin of majority has substantially increased since 1994 when Oregon legalized the practice. Moreover, by a ratio of 14 to 1, the States have acted to sanction and further strengthen bans on physician-assisted suicide since Oregon lifted its ban. It is clear that the States do not regard and, moreover, increasingly reject physician-assisted suicide through use of controlled substances as a legitimate medical purpose for treatment.

2. State Legislative and Popular Initiatives to Legalize Physician-Assisted Suicide Through Use of Controlled Substances Have Been Consistently Rejected, With the Sole Exception of Oregon's Initiatives.

After diligent research, your Amicus could discover no instance in any State in which any specific statutory proposal to legalize or authorize physician-assisted suicide through the use of controlled substances – or, indeed, to legalize or authorize assisted suicide through use of any means – has been enacted by even one body of any State legislature. Quit simply, there is not

and has not been any substantial state legislative support for any such proposal.

The Oregon DWDA, the sole instance in which assisted suicide has been legalized in the United States, was enacted and reaffirmed by popular initiative, not legislative action. Yet Oregon's endorsement of the practice by initiative is also a singular anomaly. Four other state initiatives have rejected legalization of physician-assisted suicide.

The State of Washington rejected the practice, which had been offered by ballot proposal and introduced through Washington's initiative process in the November 1991 elections. Washington Initiative 119 would have legalized physician "aid-in-dying" for terminally-ill competent patients. It was defeated by fifty-four (54) percent to forty-six (46) percent. *See* Jane Gross, "The 1991 Election: Euthanasia; Voters Turn Down Mercy Killing Idea," N.Y. TIMES, Nov. 7, 1991, at B16. Washington's Natural Death Act was then legislatively amended to expressly reject physician-assisted suicide. Wash. Laws, ch. 98, 10 (1992); Wash. Rev. Code § 70.122.100.

California's Proposition 16, a ballot initiative that would have legalized physician "aid-in-dying," was defeated in the November 1992 election by a majority of fifty-four (54) percent to forty-six (46) percent. *See* Ben Macintyre, "Voters Hold Sway on Life and Death," THE TIMES, Nov. 3, 1992, at 10; Virginia Ellis & Paul Jacobs, "'Tax-the-Rich' Plan Put Hex on Welfare Cutbacks," L.A. TIMES, Nov. 5, 1992, at A3; Frank Jones, "Euthanasia Boosters Aim to Kill Our Compassion," TORONTO STAR, Nov. 9, 1992, at D1.

The 1994 enactment of Oregon's DWDA interrupted, but did not alter, the trend. To the contrary, subsequent ballot initiatives strongly reaffirmed rejection of physician-assisted suicide.

In the 1998 election, a Michigan ballot initiative that would have enacted a statute virtually identical to the Oregon DWDA was defeated by a 2-1 ratio. *See* William Claiborne & Edward Walsh, "Mich. Assisted-Suicide Initiative Defeated," WASH. POST, Nov. 4, 1998, at A34.

Again, in the 2000 election, a Maine ballot initiative proposing a law virtually identical to Oregon's, was defeated by margin of 51.3 percent to 48.7 percent. *See* PR Newswire, "AMA Applauds Defeat of Maine Assisted Suicide Referendum," November 8, 2000, Wednesday; Nat Hentoff, "Time is running out," WASHINGTON TIMES, Jan. 1, 2001, at A15.

Thus, no legislature in the United States has even seriously entertained any law legalizing assisted suicide, whether or not with the use of controlled substances. No State other than Oregon has enacted such legislation through voter initiative – and the voters of four (4) States have specifically rejected such legislation, with Michigan and Maine voters rejecting it after Oregon's DWDA permitting physician-assisted suicide with controlled drugs was enacted in 1994. There is no legislative or substantial voter support for the notion that use of controlled drugs for physician-assisted suicide is a "legitimate medical purpose." If the Oregon DWDA is to be regarded as experiment in the laboratory of the states, then it is an experiment that has failed.

B. *State Appellate Courts of Have Uniformly Rejected Any Right to Use of Controlled Substances for Assisted Suicide.*

Recognition under state constitutions of any right to assisted suicide or physician-assisted suicide with the use of controlled substances has been rejected by courts of every State in which suit has been brought. No state court has held that such a right or privilege exists under state law.

In 1992, a California Court of Appeals held that there is no right to assisted suicide under either the U.S. Constitution or the right of privacy of article I, section 1 of the California Constitution in *Donaldson v. Lungren*, 1 Cal. App. 4th 1614, 4 Cal. Rptr. 2d 59 (1992). Donaldson sought physician assistance in dying in order to pursue and facilitate cryogenic suspension. 1 Cal. App. 4th at 1618; 4 Cal. Rptr. 2d at 60. The court rejected Donaldson's claim under both the U.S. and California Constitutions, noting that, "No statute or judicial opinion countenances Donaldson's decision to consent to be murdered or to commit suicide with the assistance of others." 1 Cal. App. 4th at 1622; 4 Cal. Rptr. 2d at 63. "We cannot expand the nature of Donaldson's right of privacy to provide a protective shield for third persons who end his life." *Id. See also Kevorkian v. Arnett*, 939 F. Supp 725 (C.D. Cal. 1996) (there is no persuasive authority to believe that the California Supreme Court would hold contrary to *Donaldson* when directly presented with the issue).

There have been two direct challenges to state anti-assisted suicide statutes based on claimed state constitutional rights to physician-assisted suicide using controlled substances.[3] The Supreme Courts of both states – Florida and Alaska – rejected recognition of any such right.

In *Krischer v. McIver*, 697 So. 2d 97 (Fla. 1997), the Florida Supreme Court rejected the concept that there is "no distinction between the right to refuse medical treatment and the right to commit physician-assisted suicide through self administration of

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[3]Prior to *Washington v. Glucksberg* and *Vacco v. Quill*, 521 U.S. 793 (1997), in which this Court held there was no federal substantive or equal protection right to assisted suicide, the Michigan Supreme Court held that the U.S. Constitution did not recognize a right to physician-assisted suicide in *People v. Kevorkian*, 527 N.W.2d 714 (Mich. 1994), *cert. denied sub nom., Kevorkian v. Michigan*, 519 U.S. 928 (1996). No state constitutional right was asserted in this case.

a lethal does of medication." *Id.* at 102. In such a circumstance, the person "will not die from the complications of his illness. Rather, a physician will assist him in administering a 'death-producing agent' with the intent of causing certain death." *Id.* at 103. The case had been brought under Florida's explicit constitutional "right to privacy" provision of art. I, § 23, Fla. Const. The Florida Supreme Court rejected its application, observing that "[b]y broadly construing the privacy amendment to include the right to assisted suicide, we would run the risk of arrogating to ourselves those powers to make social policy that as a constitutional matter belong only to the legislature." 697 So. 2d at 104 (*citing* art. II, § 3, Fla. Const. (separation of powers)). [4]

In *Sampson v. State of Alaska*, 31 P.3d 88 (Alaska 2001), the Alaska Supreme Court held that there is no right to receive "prescribed medication to self-administer for the purpose of hastening death, " *id.* at 90, under the explicit right to privacy provision (art. I, § 22) or the liberty and equal protection provision (art. I, §1) of the Alaska Constitution. As the decided, "We hold that the right to physician-assisted suicided is no implicit in text, context, or history of the Alaska Constitution's liberty and privacy clauses." *Id.* at 98. "[T]hey do not require an exemption to Alaska's manslaughter statute that would provide for physician-assisted suicide." *Id.* The Alaska Court also upheld the physician-assisted suicide ban, observing that death that follows omission of medical treatment is distinguished from death from assisted suicide because, "when a physician assists a terminal patient by prescribing medication to hasten the patient's death, the death is caused by the patient and is abetted by the physician's affirmative actions." *Id.* at 99.

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[4]For a comprehensive overview of developments in the law of assisted suicide through *Krischer v. McIver*, *see* James Bopp, Jr. & Richard E. Coleson, "Three Strikes: Is an Assisted Suicide Right Out?" 15 ISSUES IN LAW & MED. 3 (1999).

In effect, therefore, all the state courts of final jurisdiction to have addressed the matter have concluded that prescribing, dispensing, and administering a controlled substance for the purpose of assisting in suicide is no different than providing a person with a gun or rope with knowledge and intent that the person will use it to commit suicide. They agree with the Attorney General that this is not a "legitimate medical purpose" for treatment.

C. *Federal Statutory Law Supports the Conclusion that Assisted Suicide for Any Reason Is Not A "Legitimate Medical Purpose" for "Treatment."*

Congress could not be more clearly opposed to any national participation in assisted suicide practices. The "Assisted Suicide Funding Restriction Act of 1997," P.L. 105-12, § 1(a), 111 Stat. 23, 42 U.S.C. § 14401 *et seq.* (the "Act"), with the "principal purpose . . . to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing)the suicide, euthanasia, or mercy killing of any individual." *Id.* at § 14401(b).

The Act is comprehensive in scope. It provides that no federal funds whatever may be used – whether directly or indirectly, in whole or in part, or through any matching or health benefit – for assisted suicide, euthanasia, or mercy killing. *Id.* at § 14402(b). It forbids such practices in any federal facility or by any federal employee. *Id.* at § 14402(c).

The Act itemizes the federal programs to which these restrictions apply to include: the Medicare program (42 U.S.C. §§ 1395 *et seq.*), the Medicaid program (42 U.S.C. §§ 1396 *et seq.*), Title XX social services block grants (42 U.S.C. §§ 1397 *et seq.*), the maternal and child health block grant program (42 U.S.C. §§ 701 *et seq.*), the Public Health Service Act, the Indian

Health Care Improvement Act (25 U.S.C. §§ 1601 *et seq.*), the federal employees health benefits program (5 U.S.C. §§ 8901 *et seq.*), the military health care system, including TRICARE and CHAMPUS programs (10 U.S.C. §§ 1071 *et seq.*), veterans medical care (38 U.S.C. §§ 1701 *et seq.*), health services for Peace Corps volunteers (22 U.S.C. § 2504(e)), and medical services for federal prisoners. 42 U.S.C. at §§ 14402(d)(1)(A) to (K).

The Act explicitly forbids such practices in facilities or by employees of the military health care system (operating under 10 U.S.C. §§ 1071 *et seq.*), the veterans health care system or the Public Health Service. 42 U.S.C. at § 14402(d)(2). The lists are deemed nonexclusive, *id.* at § 14402(d)(3), and the Act supercedes any subsequent federal law unless it specifically otherwise provides. *Id.* at § 14408. It explicitly forbids federal grants or support of any program or service that has the purpose of assisting in suicide, euthanasia, or mercy killing. *Id.* at §§ 14403 and 14405. The Act applies to all funded activities in the District of Columbia. *Id.* at § 14407.

Moreover, the Act forbids any federal advocacy program from assisting, supporting, or providing any service that includes assisting in suicide, euthanasia, or mercy killing. It specifically forbids any such participation by: protection and advocacy systems funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. §§ 15041 *et seq.*), protection and advocacy systems funded under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. §§ 10801 *et seq.*), protection and advocacy systems funded under the Rehabilitation Act of 1973 (29 U.S.C. §794e), ombudsman programs funded under the Older Americans Act of 1965, and legal assistance programs funded under the Legal Services Corporation Act (42 U.S.C. §§ 2996 *et seq.* 42 U.S.C. § 14404(b)(1).

Finally, the Act provides that various requirements of federal law requiring that patients be informed of their treatment rights, including the Patient Self-Determination Act of 1970 (42 U.S.C. § 1395cc), neither require that patients be informed of any "right" to assisted suicide, euthanasia, or mercy killing nor impose a requirement that directs performance of assisted suicide, euthanasia, or mercy killing. 42 U.S.C. § 14406.

In sum, the policy of the federal government of the United States is uniformly and absolutely opposed to assisted suicide through the use of any means, including controlled substances. It is a national policy fully consistent with that of the several States, with the sole, completely anomalous exception of the State of Oregon. There is no basis in federal law to conclude that the use of controlled substances for assisted suicide is, under any circumstances, a "legitimate medical purpose" for "treatment."

CONCLUSION

For the foregoing reasons, Amicus Curiae National Legal Center for the Medically Dependent & Disabled, Inc., to reverse the decisions of the courts below and uphold that the interpretative rule issued by the Attorney General of the United States on November 9, 2001, providing that assisting suicide is not a "legitimate medical purpose" within the meaning of 21 C.F.R. § 1306.04, an implementing regulation of the Controlled Substances Act, 21 U.S.C. § 801.

Respectfully submitted,

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